

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1116 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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CHHOTABHAI DARUBHAI PATEL

Versus

IP GAUTAM COLLECTOR

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Appearance:

MR BS PATEL for Petitioner

MR AJ PATEL for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 25/03/97

ORAL JUDGEMENT (per C.K.THAKKER J.)

1. Admitted. Mr.A.J.Patel, learned counsel for the respondent no.1 waives service of notice of admission. In the facts and circumstances of the case, and with the consent of the parties, this LPA is taken up to day for final hearing.

2. This Letters Patent Appeal is filed against the order passed by the learned Single Judge dismissing the petition i.e. Special Civil Application No.3378 of 1996, as advocate of the petitioner-appellant was not present. Misc. Civil Application No. 1546 of 1996 was filed for restoration and the request for rehearing of the matter. The said Misc.Civil Application also came to be rejected by the learned Single Judge by his order dt. August 29, 1996.

3. Looking to the record, it appears that the petition was filed on May 2, 1996 and some order was passed. Ad.interim relief which was granted earlier came to be vacated subsequently. Mr.B.S.Patel states that on 26th August 1996 he had filed leave note and, therefore, he could not remain present in the court and the matter came to be dismissed for default. When MCA was filed, learned Single Judge has observed that under the Gujarat High Court Rules, 1993, leave note would not apply to a matter on Board. The learned Single Judge, therefore, rejected that application, In our opinion, ends of justice would be met if the matter is restored to file. Hence, the order passed by the learned Single Judge dt. 26th August 1996 in the main matter as also on 29th August 1996 in MCA No.1546 of 1996 are hereby set aside. The matter is restored to file. The learned Single Judge now will hear the matter on merits in accordance with law.

4. Since the respondent had to come to this court pursuant to the notice of admission in Letters Patent Appeal issued by us and since the matter was dismissed because of non-appearance on the part of the petitioner's advocate in our opinion, it would be reasonable to award an amount of Rs.1500/- by way of costs to the respondents. We may say that we are not expressing any opinion on merits.

Dt. 26.3.1997. (C.K.THAKKER J)

(H.L.GOKHALE J)